

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 554 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ASHOK BALABHAI MAKWANA AT PRESENT IN JAMNAGAR JAIL

Versus

STATE OF GUJARAT, THROUGH ADDITIONAL CHIEF SECRETARY

Appearance:

MR BUDHBHATTI for RAJENDRA K JOSHI for Petitioner
MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/04/2000

ORAL JUDGEMENT

1. The District Magistrate, Bhavnagar, passed an order on August 25, 1999 in exercise of powers under section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short), detaining Ashok Balabhai Makwana - petitioner under the provisions of the

said Act.

2. The grounds of detention indicate that the detaining authority found the activities of the detenu to be that of a 'bootlegger' as defined under the PASA Act. For recording this finding, the detaining authority took into consideration six offences registered against the detenu under the Bombay Prohibition Act. The detaining authority also took into consideration the statements of three anonymous witnesses in respect of incidents dated July 17, 1999, August 12, 1999 and August 1, 1999 respectively. The detaining Authority recorded a satisfaction that the incidents narrated by anonymous witnesses and the fear expressed by them qua the petitioner in respect of their person and property were correct and genuine. The authority found that it was in the public interest to exercise the privilege of not disclosing the identity of the witnesses and, therefore, the authority exercised the powers under section 9 (2) of the PASA Act. The detaining authority considered the possibility of resorting to less drastic remedies and found that it is not possible to resort to such remedy as the petitioner is immediately required to be prevented from pursuing his illegal and antisocial activities which are detrimental to public order. The authority also considered it necessary to immediately detain the petitioner under the provisions of PASA Act as that was the only efficacious remedy that could be resorted to for the purpose of immediately preventing the petitioner from pursuing his illegal and antisocial activities.

3. The detenu has challenged the order of detention on various grounds. The only grounds pressed into service by Mr. Budhbhatti, learned advocate appearing for the petitioner, are that the statements of anonymous witnesses have not been properly verified by the detaining authority and, therefore, there is improper exercise of powers under section 9 (2) of the PASA Act. This has infringed the right of the detenu of making effective representation contemplated under Article 22(5) of the Constitution of India. He therefore urged that the order may be quashed.

3.1 Mr. Budhbhatti further submitted that there is a delay in executing the order. He submitted that the delay in executing the order of detention would vitiate the genuineness of the need for immediate detention and, therefore, the order would stand vitiated. He relied on the decision in the case of A. Mohammed Farook Vs. Government of India and others, reported in 2000 Criminal Law Reporter (SC) Page-91 and submitted that the petition

may be allowed.

3.2 Mr. Budhbhatti submitted that there is supply of wrong documents by the detaining authority. He has drawn attention of this Court to copy of chargesheet counter in respect of registered offences taken into consideration by the detaining authority in the ground of detention. That offences relates to C.R. No. 35/98, whereas if the chargesheet counter is seen, it relates to C.R. No. 34/98. It was therefore urged that the petitioner's right of making effective representation is affected. Mr. Budhbhatti therefore submits that the petition may be allowed on above grounds.

3.3 No other contention is taken. No other case is cited.

4. Mr. Dave learned AGP has opposed this petition vehemently. He submitted that the detaining authority has recorded the satisfaction after personally verifying the statements of anonymous witnesses and as such the Court may not address the question of sufficiency or insufficiency of the material before the detaining authority. So far as the delay in detention is concerned, Mr Dave submitted that if the record of the detinue is seen, he has a tendency of absconding and in most of the cases registered against him, he could be arrested only after some time and, therefore, delay in executing the order of detention may not be considered as fatal to the order of detention.

4.1 Mr. Dave submitted that so far as the supply of wrong documents is concerned there appears to be slip of pen because if the chargesheet counter is seen, although C.R.No.34/98 is mentioned on left hand top, in the right hand column at the bottom, there is reference to C.R. No.35/98 and the documents, in fact, relates to C.R. No. 35/98 and, therefore, the petitioner's right of making effective representation cannot be said to have been affected.

4.2 Mr. Dave, lastly submitted that in light of Section 6 of the PASA Act, each of the ground is independent of the other and, therefore, unless all of them are demolished by petitioner by showing that they suffered from one defect or the other, order of detention cannot be quashed, as the grounds are severable. In support of his arguments Mr Dave has placed reliance on the decision of the Apex Court in the case of Attorney General for India Vs. Amratlal Prajivandas, reported in AIR 1994 SC 2179 and subsequently, followed by a Full

Bench judgment of this Court in the case of Paresh Ramanlal Amin Close Friend of Detenue Ramesh J Shal Vs. State of Gujarat in Special Civil Application No. 646 of 1994 decided on March 31, 2000. According to Mr. Dave even if all the arguments of Mr. Budhbhatti are accepted, there remains at least five registered offences against the detenue as valid grounds for detaining the petitioner. Mr. Dave therefore submits that since the petitioner is not able to indicate any defect or lacuna in respect of these grounds, the petition for quashing the order of detention may be dismissed.

4.3 As regards the delay Mr. Dave submitted that the decision relied upon by Mr. Budhbhatti cannot be applied to the facts of the present case because in the case before the Apex Court the petitioner had approached the Court with a specific plea that during the period between passing of the order and the execution of the order of detention, the petitioner did not abscond and that he was very much available in his office and residence at Chennai. This is not the case before this Court and, therefore, the decision will not be of any help to the petitioner. Mr. Dave therefore urged that the petition may be dismissed.

5. Having regard to the rival side contentions, it may be noted that in light of the decisions in the case of Attorney General for India Vs. Amratlal Prajivandas (supra) by the Apex Court and in the case of Paresh Ramanlal Amin Vs. State of Gujarat (supra) by a Full Bench of this Court, each of the ground on which the order of detention is based would be severable and applicability of Section 6 of the PASA Act does not impinge upon the scope and sphere of operation of Article 22(5) of the Constitution of India. Consideration of a ground of detention which is not inexistence as it is vague, would not affect the right of the detenue of making effective representation under Article 22(5) of the Constitution of India. With this proposition of settled law, the present matter will have to be examined.

6. The first contention is regarding improper exercise of power under Section 9(2) of the PASA Act. If the compilation supplied to the detenue which is produced on record is seen a statements of anonymous witnesses have been recorded on August 18, 1999. The statements have been verified by the detaining authority on August 25, 1999 and the order is passed on August 25, 1999 i.e. on the date of the day of verification. The verification by the detaining authority is a one word verification by putting an endorsement "verified".

6.1 In this regard it may be noted that the detaining authority while exercising the powers under Section 9(2) of the PASA Act, is expected to undertake certain exercise as laid down in the case of Bai Amina Vs. State of Gujarat reported in 1981 GLR 1186. The authority has to examine the statements, veracity and need for exercise of powers under Section 9(2) in light of background, character, antecedents etc. of the detainee. The detaining authority has to scale the public interest against the right of the detainee of making an effective representation and strike a delicate balance between the two. This would certainly require time. The authority has verified the statements and has passed the order on one and same day i.e. August 25, 1999. The authority therefore had no time to undertake this exercise and exercise of powers under Section 9(2) of the PASA Act, would therefore be improper which would infringe the right of the detainee of making an effective representation. In this regard the decision of Division Bench of this Court in the case of Kalidas Chandubhai Kahar Vs. State of Gujarat and others reported in 1993 (2) GLR 1659 can also be considered. Besides this, as held in the case of Bai Amina Vs. State of Gujarat, the authority is expected to make a contemporaneous record to indicate that the exercise as expected of it, was in fact undertaken, but not such contemporaneous record is coming from the detaining authority. Under these circumstances, there is improper exercise on the part of detaining authority of powers under Section 9(2) of the PASA Act and, therefore, the right of the detainee of making an effective representation in respect of these statements of anonymous witnesses can be said to have been infringed.

7. The order of detention is based not only on the statements of anonymous witnesses, but also on the basis of six offences registered against the detainee. Out of six cases, only defect that has been shown is in respect of Talaja Police Station C.R. No. 35/98 wherein it has been shown that the copy of the chargesheet counter refers to C.R. No. 34/98. Although the contention does not seem to be well founded as there is reference to C.R. No. 35/98 in another column. However, even if benefit is given to the detainee, then also there would be five offences registered against the detainee as valid grounds for passing the order of detention.

8. In this regard the observation of the Apex Court in the case of Attorney General for India Vs. Amratlal Prajivandas (supra) may be considered. In para -48 their

Lordships observed as under :

"Now, take a case, where three orders of detention are made against the same person under COPEPOSA. Each of the order is based upon only one ground which is supplied to the detinue. It is found that the ground of detention in support of two of such orders is either vague or irrelevant. But the ground in support of the third order is relevant, definite and proximate. In such a case, while the first two orders would be quashed, the third order would stand. This is precisely what the first part (the main part) of Section 5-A seeks to do. Where the order of detention is based on more than one ground, the section creates a legal fiction, viz. it must be deemed that there are as many orders of detention as there are grounds which means that each of such orders is an independent order. The result is the same as the one in the illustration given by us hereinabove. The second part of it is merely clarificatory and explanatory, which is evident from the fact that it begins with the word "accordingly" - apart from the fact that it is joined to the first part by the word "and". In such a situation, we are unable to see how can the section be characterised as inconsistent with Article -22 (5). Had there been no first part, and had the section consisted only of the second part, one can understand the contention that the section is in the teeth of Article 22(5) as interpreted by this Court - this was indeed the situation in K. Yadgiri Reddy vs. The Commissioner of Police, ILR (1972) Andh. Pra 1025 as we shall presently indicate, it is difficult to conceive any inconsistency or conflict between Article 22(5) and the first the main part of Section 5-A. The Parliament is competent to create a legal friction and it did so in this case. Article 22(5) does not in terms or otherwise prohibit making of more than one order simultaneously against the same person, on different grounds. No decision saying so has been brought to our notice. Bethat as it may, we do not see why the Parliament is not competent to say, by creating a legal fiction, that where an order of detention is made on more than one ground, it must be deemed that there are as many orders of detention as there are grounds. If this creation of a legal fiction is competent, then no question of any inconsistency between the

section and Article 22(5) can arise."

Thus, each of the five other cases would stand good as independent for detaining the detenu, since no defect of any nature is shown which would vitiate the order of detention in respect of this case.

9. So far as the delay in execution of order is concerned, there appears no substance in the contention of Mr. Budhbhatti in light of the arguments advanced by the Mr. Dave learned AGP. It must be noted that in the decision relied upon by Mr. Budhbhatti in the case of A. Mohammed Farook Vs. Joint Secy. to Govt. of India and other (supra) there was delay of 40 days in executing the order of detention. In that case the petitioner had come with a specific plea that he did not abscond and that he was very much available in his office and at the residence at Chennai. This contention of the petitioner was countered by the detaining authority, but with general submission that despite the efforts the petitioner could not be located at his residence or in his office and, therefore, the order was executed immediately. The authority did not file any report from the executing agency before the Court to indicate as to what steps were taken by the executing agency to save detention order and, therefore, Apex Court accepted the case of the detenu. In the instant case the petitioner is not coming with a specific plea that he was not absconding and that he was available at his address throughout the period between passing of the order and execution of the order on October 8, 1999. In absence of any specific plea on the part of petitioner/detenu it would not be proper to expect the detaining authority to explain the delay, particularly in light of record of the detenu as is emerging from the papers relating to registered offences. In case of C.R.. 160/98 dated September 22, 1998 he was arrested on October 26, 1998. In respect of C.R.. No. 171/98 the offences were relating to incident dated October 8, 1998 and the man was arrested on October 26, 1998. In respect of C.R.. No. 10/99 dated January 12, 1999 he was arrested on the same date. In respect of C.R.No. 86/99 dated May 21, 1999 he was arrested on May 25, 1999 and in respect of C.R.. No.125/99 dated July 10, 1999 he came to be arrested on July 20, 1999. Thus, he has that tendency of evading the execution of such orders and, therefore, when he does not come with a specific case that he was very much available and still the order is not executed, the arguments advanced by Mr. Buddhbhatti cannot be accepted. In fact, the contention raised in the petition

is also not to this effect, if para-K is seen.

10. No other arguments have been advanced no other case law is cited.

11. In light of what is discussed above although the petitioner is able to indicate some defect or lacuna affecting the right of the detenue in some of the grounds of detention, there are certain other grounds which still remain unshaken to support the order of detention. The petition therefore can not succeed and deserves dismissal and the same is dismissed. Rule discharged. No order as to costs.

(A.L.Dave, J)

(Vipul)